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THE PLANNING ACT

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# A GUIDE TO THE PLANNING ACT 1983

October, 1983

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# A GUIDE TO THE PLANNING ACT 1983

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# INTRODUCTION

The 1983 **Planning Act** replaces Ontario's original **Planning Act**, which was introduced in 1946. The new Act is the result of a comprehensive review of Ontario's planning process which began with the report of the Planning Act Review Committee and later resulted in a White Paper on a new Act. Legislation is of necessity written in language designed for as precise an interpretation as possible in the courts, but this does not make for easy comprehension by laypersons. This guideline attempts to re-state the Planning Act in non-legal terms, but is intended to be used in conjunction with the Act and not as a substitute for it. The actual text of the legislation should be referred to when accurate reference is required.

References to The Minister and the Ministry mean "The Minister and the Ministry of Municipal Affairs and Housing".

The section and subsection numbers in the text refer to the corresponding sections of the **Planning Act**, 1983.

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# DEFINITION

## SECTION 1. DEFINITIONS

This section sets out the definitions required to interpret the revised Planning Act. Although most of the definitions are straightforward, there are now two definitions for both "local municipality" and "municipality". The term "municipality" incorporates counties and regional type municipalities, as well as all types of "local municipalities". Whenever the term "local municipality" is used it **only** refers to cities, towns, villages and townships whereas the term "muncipality" includes **all** types of municipalities.

The other significant definition is "official plan". The definition indicates that the main purpose of an official plan is to guide a municipality's physical development, but in doing so an official plan may have regard to social, economic and environmental matters.

# PART I: PROVINCIAL ADMINISTRATION

This part of the Planning Act formally defines the role of the Province in municipal planning and sets out the general matters of provincial interest, implementation procedures, general administration and delegation of approval functions.

## SECTION 2. MATTERS TO BE CONSIDERED BY THE MINISTER

This section establishes a basis for the activities of the Minister and sets down a checklist of provincial concerns for councils, boards and other agencies which will be considered by the Minister in safeguarding planning interests at the provincial level.

Other expressions of provincial concern may be found in regulations, which have the full force of law, and in guidelines, which are of an advisory nature only.

## SECTION 3. POLICY STATEMENTS

This important section enables the Minister independently, or with another Minister, to issue a policy statement on a specific planning matter of provincial interest. A policy statement is a formal means of letting the public know what the Government's position is on a specific planning issue; e.g. the protection of agricultural lands.

Prior to issuing a policy statement, subsection (2) requires the Minister to consult with parties that may be considered to be affected by the policy statement. Once the policy statement has been approved by the Cabinet, subsection (3) provides for its distribution and publication in the **Ontario Gazette**.

Although intended to have more weight than a guideline, a policy statement does not have the same force as a regulation. Subsection (5) says that provincial agencies and all municipal councils must "have regard to" policy statements. Policy statements remain in effect until formally withdrawn or amended.

## SECTION 4. DELEGATION OF MINISTER'S POWERS

Upon request, any of the Minister's approval authority under the **Planning Act** and other related Acts may be delegated to a municipal council or to a planning board in unorganized territory. In the past, this delegation has largely been limited to regional municipalities. In the future the Minister's policy will enable, for example, counties, separated towns and cities not in regions to request delegated authority, other than the authority to approve their own official plan.

Before delegating authority, the Minister will ensure that the delegated body has the resources to carry out the specific activities. The criteria for determining whether or not delegation would occur, include appropriate official plan coverage, permanent professional planning staff, approved administrative procedures and adequate financial resources.

Where the Minister has delegated approval authority to a council or planning board under subsections (1) and (2), it acquires all ministerial powers, rights and responsibilities, except for the authority to approve its own official plan or amendments.

Subdivision, condominium and official plan powers are delegated by order of the Minister. Monitoring of consent and minor variance decisions or commenting on zoning by-laws to the OMB is simply an administrative function delegated by the Ministry staff on behalf of the Minister.

In addition to authority under the **Planning Act**, the Minister may also delegate authority

- to approve descriptions under section 50 of the **Condominium Act**;
- to approve by-laws altering, diverting or closing roads in registered plans under subsection 298(11) of the **Municipal Act**;
- to approve under subsection 306(2) of the **Municipal Act**, the laying out of highways of less than 20 metres (or more than 30 metres); and
- to consent to the making of judge's orders under subsection 82(3) of the **Registry Act**, or section 145 of the **Land Titles Act**, amending registered plans of subdivision that were approved by the Minister.

The Minister may make any delegation subject to specific conditions, and can also withdraw the delegation, either with respect to a particular application or to the entire function.

## SECTION 5. FURTHER DELEGATION BY MUNICIPALITIES

Authority delegated by the Minister may, in turn, be delegated by the municipal council receiving the authority to a committee of its council or to an appointed official. Such delegation may be subject to conditions and may be withdrawn by the council. However, the approval of official plans and their amendments **must** remain the responsibility of the elected council.

Under subsection (2), this further delegation also applies, in northern Ontario only, to the giving of consents under section 52. Where a council in northern Ontario has been delegated consent authority by the Minister, the council may further delegate this authority to a committee of adjustment. (In southern Ontario, consent authority is directly assigned by the legislation to upper-tier municpalities—see also section 53: Delegation of Consent Authority).

## SECTION 6. CONSULTATION ON PUBLIC WORKS

Before carrying out any undertaking that may directly affect a municipality, provincial agencies and Ontario Hydro must consult with the municipality and have regard to the municipality's established planning policies. This also applies to undertakings by provincial ministries and carried out by other agencies.

## SECTION 7. POWER TO MAKE GRANTS

The Minister may make grants of money for planning purposes. For example, grants for the planning and implementation of community improvement projects, municipal housing policy studies, official plan preparation or zoning by-law preparation, energy conservation studies related to land use and planning administration grants for work undertaken in unorganized territories by planning boards.

# PART II: LOCAL PLANNING ADMINISTRATION

Part II sets out the provisions for planning that are **not** carried out directly by municipal council under provisions in other sections of the Act. Much of the part involves planning between municipalities and the special provision for joint planning in northern Ontario.

## SECTION 8. PLANNING BETWEEN MUNICIPALITIES

The council of a municipality may appoint a planning advisory committee which can be made up of elected or non-elected persons. Two or more municipalities may, by agreement, establish a joint planning advisory committee to plan for matters of mutual concern.

A planning advisory committee is not a planning board, and no provincial approval is needed to establish one. The difference is that a planning board is a body corporate with specific powers defined in legislation. A planning advisory committee, on the other hand, performs only the duties assigned to it by the municipal council. The elected council is the only body legislatively responsible for planning authority and must make all final decisions.

## SECTION 9. JOINT PLANNING IN NORTHERN ONTARIO

Much of northern Ontario is so sparsely populated that it has no municipal organization, and other than the Regional Municipality of Sudbury, there is no regional or county government to form the basis for joint planning organization, as is the case in southern Ontario.

In the territorial districts of the north, the Minister may define planning areas made up of two or more organized municipalities or unorganized territory and organized municipalities together.

It should be noted that joint planning boards in northern Ontario are the only planning boards that remain in the province unless a planning area is made up entirely of unorganized territory, as described in section 10. This should be kept in mind when reading sections 10 to 14.

The Minister defines the area and the number of board members to be appointed by the council or councils, appoints members to represent the unorganized area and specifies the length of their appointed term.

## SECTION 10. PLANNING AREA IN UNORGANIZED TERRITORY

Where it is neccessary to establish a planning area in northern Ontario made up entirely of unorganized territory, the Minister defines the area, names it and appoints the planning board members.

## SECTION 11. COMPOSITION OF PLANNING BOARD

A planning board must annually elect a chairman and vice-chairman. A majority of the members make a quorum. The board must appoint a secretary-treasurer, who may be one of their number. A planning board is a body corporate with a corporate seal, and executed documents must be signed by the chairman or the vice-chairman, and the secretary-treasurer.

## SECTION 12. BUDGET OF PLANNING BOARD

A planning board must submit annually an estimate of its financial requirements to the council of each municipality in the planning area. If more than one municipality is involved, a statement must be included of the proportion to be charged to each municipality.

The estimates may be approved as submitted, or they may be amended and approved by the councils involved. The estimates are binding when approved by the councils of municipalities representing more than half the population of the planning area. If a council is not satisified with the apportionment an appeal may be made to the Municipal Board and the Board's decision is final.

## SECTION 13. GRANTS TO PLANNING BOARD

In addition to the money received in accordance with the estimates described in section 12, a planning board may receive additional sums if work is required which had not been foreseen in the budget. If the work is not of benefit to all the municipalities in a planning area, it is possible for it to be financed only by the benefiting municipalities.

## SECTION 14. DUTIES OF PLANNING BOARDS

The duty of a planning board is to provide advice and assistance on planning matters referred to it by the council or councils of the municipalities in the planning area. If the planning area includes unorganized territory, such advice and assistance may also be sought by the Minister.

The primary task of a planning board is the preparation of an official plan, but it may also be asked for advice on zoning, community renewal, subdivision applications and other planning problems. A planning board must prepare an official plan and this is the only task the Act specifically assigns to the planning board. Other tasks such as giving advice on zoning, community renewal, subdivision applications or other planning problems are only performed at the request of a council.

## SECTION 15. ADDITIONAL FUNCTIONS OF UPPER-TIER MUNICIPALITY

A county or regional municipality may be able to provide a professional planning service which the individual local municipalities in the area find uneconomical to provide separately. By agreement between the two levels, the upper-tier municipality may assume any planning authority or function that the lower-tier may have under the Act or give advice and assistance on planning matters.

# PART III: OFFICIAL PLANS

This part of the Act covers all aspects of a municipality's statutory power to prepare an official plan. The sections deal with the content of the plan, its preparation, notice, adoption, approval, amendment and review.

## GENERAL DESCRIPTION

An official plan is a document in which the planning and development policies of a municpality or of a planning area are described. The policies may also affect development under the jurisdiction of a local board (e.g. school board, utility commission).

The plan is made up of maps and a text. One of the maps is usually a future land use plan, showing for example where industry and commerce are expected to locate, and which areas are intended to be reserved for residential uses. The corresponding text explains what the various designations on the map really mean. For instance, within the broad category of residential use, the text would clarify at what density development could occur and whether parks, schools, local stores, apartment buildings, public utilities and home occupations are included. It might also specify under what circumstances such uses would be permitted.

Other main portions typically deal with the road network, the water supply and sewerage systems to service development, the staging of development areas, the distribution of different types of parks throughout the planning area, etc.

## SECTION 16. CONTENTS OF OFFICIAL PLAN

The term "official plan" is defined in subsection 1(h) to mean a document providing guidance for the physical development of a municipality, while having regard to relevant social, economic and environmental matters. Section 16 elaborates on this definition by noting that the plan may indicate the manner in which the objectives of the plan will be attained, and how public participation will take place, for both official plan amendments and zoning by-laws. (See also subsections 17(4) and 34(14)).

## SECTION 17. PROCEDURES FOR PREPARATION, ADOPTION, APPROVAL OF OFFICIAL PLAN

The authority to prepare an official plan is assigned directly to the elected council of municipalities (including counties and regions). Although planning advisory committees, joint planning boards (in northern Ontario only) or other committees of council may assist in the preparation of an official plan, the final decision regarding the plan rests with the council.

### Preparation of the Official Plan: 17(1)–(5)

Before adopting an official plan or amendment, the council of a municipality must publicize its proposed plan and make information available on it in accordance with a procedure set out in a provincial regulation (subsection 2). This includes holding a public meeting to discuss the proposed plan for which at least 30 days notice must be given (subsection 3).

As an alternative to subsections 17(2) and (3), subsection (4) provides that a municipality may process a proposed plan or amendment in accordance with its own public involvement

procedures, but these must be established in the municipal official plan and approved by the Minister (see also section 16).

In addition to providing information and an opportunity to submit comments on a proposed plan to the public, subsection (5) extends this requirement to boards, commissions, authorities or agencies that the council considers may also be affected.

**Adoption of the Official Plan: 17(6)- (8)**

When public involvement requirements have been met, the council may adopt the plan or amendment, by by-law, and submit it for approval, either to the Minister or to the upper-tier municipality, if the Minister's authority has been delegated (see section 4 — Delegation of Minister's Powers).

When the plan or amendment is adopted, subsection (7) requires the clerk of the municipality to compile a record of materials listed in the legislation and forward this information to the Minister.

Within 15 days of council adopting the plan or amendment, subsection (8) requires the clerk to give notice to all persons that filed a written request to be notified and to each body that submitted comments.

**Approval of the Official Plan: 17(9)- (10)**

The Minister may confer with anyone he considers may have an interest in the plan or amendment, and then may approve the plan, or refuse to approve it or approve it subject to modifications. Before rejecting or modifying a plan, the Minister must consult with the municipal council. Also, the Minister may approve only a part of the plan and possibly approve additional parts later.

**Referral of the Official Plan to the Municipal Board: 17(11)- (13)**

Another option is for the Minister to refer part or all of a plan to the Municipal Board. This allows issues to be aired at a public hearing before an independent tribunal. If an individual or an agency requests that the plan be referred to the Municipal Board, the Minister is obliged to refer it, unless that request is not made in good faith or is frivolous or vexatious or is made only for the purpose of delay. To help the Minister form an opinion, a request for referral must be supported by written reasons. If the Minister refuses to refer the plan to the Board, a written explanation for the refusal must be given.

**Parties to a Referral: 17(14)- (16)**

The person or body asking for a referral and the municipality are automatically parties to the referral. This gives them certain rights to present evidence and cross-examine witnesses at the Municipal Board hearing. The Board may add other persons, including the Minister, as parties to the referral. Persons who are not parties may be permitted to make representations at the hearing.

**Ontario Municipal Board Hearing and Decision: 17(17)- (18)**

Once the Minister has referred a plan or amendment to the Municipal Board, the Board holds a hearing with notice given to the parties, and to such other persons or bodies as the Board considers appropriate. (See also section 64 Resumption by Minister of Matters Referred to the Ontario Municipal Board.)

Under subsection (18) the Board may make any decision that the Minister could have made (i.e. 17(9)–(10)).

**Provincial Interest in a Referral: 17(19)–(21)**

If the Minister considers that a provincial interest may be affected by a plan referred to the Municipal Board, he may so advise the Board not later than 30 days before the hearing starts. The Board then holds its hearing and makes a decision in the usual way, however, the Board's decision is not final and binding until confirmed by Cabinet.

The Cabinet may also vary or rescind the decision of the Board on matters of provincial interest.

## SECTION 18. PREPARATION OF PLAN BY PLANNING BOARD

A plan prepared by a joint planning board in northern Ontario must be submitted to each municipal council in the planning area after it has been prepared to the satisfaction of a majority of the members of the board. After going through the public participation process described in subsections 17(2) to (6), each council may adopt the plan by by-law and send a certified copy of the adopting by-law to the secretary-treasurer of the planning board.

When the secretary-treasurer of the planning board has received a copy of the adopting by-law from a majority of the councils to which the plan was submitted, the plan is sent to the Minister for approval, in accordance with the process described in section 17, and all of the provisions of section 17 apply.

## SECTION 19. PREPARATION OF PLAN IN UNORGANIZED TERRITORY

In a planning area consisting solely of unorganized territory, the planning board must provide for public participation in the preparation of the plan. Subsequently, the board proceeds to adopt the plan, in accordance with the provisions of section 17, as if it were a municipal council and the secretary-treasurer were a municipal clerk.

## SECTION 20. LODGING OF PLAN

Copies of an approved official plan must be lodged by the clerk in the Minister's office* and the office of the clerk of each municipality specified by the Minister. The clerk of the municipality of which the plan applies keeps a copy on record. If the plan applies to more than one municipality, the lodging of these copies must be done by the clerk of the municipality with the largest population. All these copies must be available for public inspection during normal office hours.

## SECTION 21. AMENDMENT OR REPEAL OF PLAN AND WAIVING OF APPROVAL

No official plan remains static. The Act provides for amendments to an official plan, each amendment being a legal document and part of the official plan itself.

An amendment to an official plan may represent a change in policy with respect to permitted development. For example, if it is decided to permit industrial development in an area shown as "Rural" on the land use map, an amendment to the official plan would be required before the zoning by-law may be amended to permit the industrial use.

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* The Minister's copy is kept in the Plans Administration Branch of the Ministry.

Some amendments to the official plan may simply refine the existing policy. For example, a detailed amendment may be prepared for an area designated for residential use. The amendment would show more details about the types of dwellings to be permitted in different parts of the neighbourhood (single-family, semi-detached, townhouses, walk-up apartments, high-rise apartments, etc.) and the location of parks, schools and other neighbourhood facilities.

All the provisions of section 17 apply also to each amendment to the plan, or to a repeal. "Repeal" means that an existing official plan is rescinded.

Where an official plan was prepared by a planning board in northern Ontario, a municipal council may initiate an amendment or a repeal affecting its own municipality.

**Waiving of Approval: 21(2)**

If the Minister (or his delegate) decides that no provincial interest is involved, and if no request is received to refer an amendment to the Municipal Board, approval may be waived and the amendment is automatically given the same status as an amendment approved by the Minister.

## SECTION 22. REFERRAL TO ONTARIO MUNICIPAL BOARD WHERE AMENDMENT IS REQUESTED

If an individual wants to have the official plan amended and the council refuses to amend the plan or ignores the request, that person may, after 30 days, request the Minister to refer the proposed amendment to the Municipal Board. The same applies if a planning board refuses or ignores a request to amend a plan, in an area containing unorganized territory, where a planning board is responsible for initiating amendments.

When the Minister has studied the request and conferred with the council or any other affected agency (as provided in subsection 17(9)), he may decide whether to refer the request to the Municipal Board or not. If it is decided to refer the request but there is a provincial interest involved, the Board must be informed not later than 30 days before the hearing date on the referral and the same procedure is followed as described on page 8 (Provincial Interest in a Referral).

## SECTION 23. REQUEST BY MINISTER TO AMEND OFFICIAL PLAN

In order to implement policy statements issued under section 3 it may be necessary to amend municipal official plans to incorporate the policy. This may well happen voluntarily by a locally-initiated amendment, but the Minister has the power to make the necessary amendment himself if the matter is urgent enough and the council is unwilling.

Before amending an official plan on his own initiative, the Minister may request the Ontario Municipal Board to hold a hearing on the matter. If anyone requests a hearing, the Minister must refer the matter to the Board unless the request is not felt to be in good faith, or is frivolous or vexatious, or is made only for the purpose of delay.

When the matter has been referred to the Ontario Municipal Board, the Board gives notice, holds a hearing and accepts submissions on the matter. The Board makes a decision on whether the proposed amendment (or an alternative form of amendment) should be made. The Board's decision, however, is not final and binding unless confirmed by Cabinet.

The Cabinet may also vary or rescind the decision of the Board and may direct the Minister to amend the plan as it determines.

## SECTION 24. PUBLIC WORKS AND BY-LAWS TO CONFORM WITH PLAN

Although an official plan does not directly restrict land use or cause anything to happen, its legal effect is substantial, mainly because several things may not occur, except in conformity with the plan. Specifically, no municipal by-law may be passed and no public work may be undertaken if it conflicts with the official plan.

However, a council may undertake studies and take preliminary steps for a public work in conflict with the official plan as long as work is not begun on the undertaking itself.

### Zoning Amendment Implementing Official Plan Amendment: 24(2)

If a proposed development requires amendments to both the official plan and the zoning by-law, it is not necessary to wait until the official plan amendment is approved by the Minister before council passes the implementing zoning by-law amendment. As long as council does not adopt the zoning amendment before the official plan amendment, the processing of both documents may occur concurrently. (Without this exception clause, a careful reading of subsection 24(1) would require the processing of the official plan amendment to be completed before council could legally pass the corresponding zoning amendment.)

### Deeming a Zoning By-law to Conform: 24(4)

If a zoning by-law is passed and no one appeals it, or if an appeal is launched and dismissed, the by-law is deemed to conform with the official plan. This provision is necessary to avoid legal action against the by-law, years after it is in force.

## SECTION 25. ACQUISITION OF LANDS IN ACCORDANCE WITH PLAN

A municipality may acquire and hold land for the purpose of developing any feature of the official plan, provided that it has an official plan with provisions relating to the acquisition of land, and those provisions have been approved since the coming into force of a similar clause in the **Planning Act** in 1974.

## SECTION 26. NEED FOR REVISION

Every municipality that has adopted an official plan and had it approved must hold a special council meeting, at least once every five years, to consider whether the official plan should be revised. Notice must be given as set out in subsection 26(2). In addition, the Minister may direct a council at any time to undertake a revision of an official plan, if for example it has become very out-of-date.

## SECTION 27. EFFECT OF UPPER-TIER PLANS

When a regional, county, metropolitan or district official plan is approved by the Minister, every local official plan and zoning by-law in the area must be amended to conform. The upper-tier council may initiate these amendments, if necessary, after waiting one year from the approval of the upper-tier official plan.

Where a conflict between an upper and lower-tier plan exists, subsection 27(4) provides that the upper-tier plan prevails, but in all other respects the local official plan remains in full force and effect.

# PART IV: COMMUNITY IMPROVEMENT

This Part of the Act deals with the renewal or improvement of existing development. As attitudes and priorities change, the name of the process also changes. What started out as urban renewal and redevelopment has more recently become known as improvement.

## SECTION 28. GENERAL PROVISIONS

### Community Improvement Project Area: 28(1), (2)

A local council may, by by-law, designate a **community improvement project area** if there is an official plan in effect which contains provisions relating to community improvement in the municipality.

### Land Acquisition: 28(3)

In a community improvement project area, land may be acquired and cleared or otherwise prepared for community improvement. The Minister's approval is required for the acquisition if it occurs before the approval of the community improvement plan. The Minister's approval is not required when acquisition occurs after approval of the community improvement plan.

### Community Improvement Plan: 28(4)

The next step is usually the preparation of a **community improvement plan**. The process for the preparation of a community improvement plan and for preparing amendments is the same as the process for an official plan and official plan amendments, described in subsections 17(2)-(21) and subsections 21(1), (2). However, a community improvement plan does not form part of the official plan.

### Deemed Community Improvement Plan: 28(5)

Subsection 28(5) of the new Act gives the Minister the authority to deem the official plan provisions on community improvement to be a community improvement plan for the purposes of implementation. This section will likely have very limited application and will only be used in situations where a two stage policy and plan process would serve no useful purpose. An example of such a situation would be a small municipality which has a single project area ready for immediate implementation.

### Improvements on Acquired Lands: 28(6)

A municipality may erect buildings and repair, rehabilitate or improve buildings on the acquired land, in accordance with the plan and may dispose of any such land and buildings.

### Grants or Loans: 28(7), (8)

A municipality may make grants or loans to owners in a community improvement project area to pay for all or part of the cost of rehabilitation in accordance with the plan. A loan and the interest on it may be collected over a period of years by adding it to the tax bill, as described in subsections 32(2)-(3).

### Control on Land Disposed Of: 28(9), (10)

If land in a community improvement project area is to be sold, leased or otherwise disposed of, before a zoning by-law is passed to implement the plan, the person acquiring the land must sign an agreement to maintain the property in conformity with the plan. The

agreement may be registered against the land and can be enforced against subsequent owners or tenants. However, while the plan is being prepared, the municipality may lease any land in the area for any purpose up to three years at a time.

**Dissolution of Area: 28(12)**

After the community improvement plan has been carried out, the council may by by-law dissolve the community improvement project area.

## SECTION 29. AGREEMENTS ON STUDIES AND DEVELOPMENT

With the Minister's approval, a municipality may enter into an agreement with any governmental authority or agency, including, for example, a federal agency such as Canada Mortgage and Housing Corporation, for the carrying out of studies and the preparation and implementation of plans and programs for the development or improvement of the municipality.

It should be noted that subsection (2) permits a municipality to enter into an agreement with another municipality without ministerial approval.

## SECTION 30. AGREEMENTS ON GRANTS FOR COMMUNITY IMPROVEMENT

The Minister, with Cabinet approval, may enter into an agreement with a municipality to help pay for work in a community improvement area, or for studies to select a community improvement area.

## SECTION 31. PROPERTY STANDARDS BY-LAWS

**Authority for a By-law: 31(1)-(3) and (22)**

If a municipality has an approved policy relating to property conditions, it may pass a property standards by-law. The approved policy would normally form part of the official plan, but if there is no official plan, the council may adopt a policy statement on property conditions and occupancy, and submit it to the Minister for approval.

A property standards by-law sets down standards for the maintenance and occupancy of property and prohibits the use of property that does not conform to the standards. It may require all sub-standard properties to be repaired and made to conform to the by-law, or else to be torn down and the site to be levelled.

The by-law may apply to an entire municipality or to any portion of it and must provide for the establishment of a property standards committee to hear appeals.

A maximum penalty of $500 may be imposed on a property owner for each day he is in contravention of an order than is final and binding.

**Inspection: 31(4) and (5)**

An authorized property standards officer may, in the course of his duties, enter and inspect any property at all reasonable times upon producing proper identification. However, he may not enter any place used as a dwelling, without the consent of the occupier, unless he has a search warrant.

**Notice of Violation: 31(6)**

If, after inspection, a property is found by a property standards officer to be below standard, the officer must serve notice on the owner and describe the deficiencies. The notice must either be served personally or be sent by registered mail to the owner and to all persons having an interest in the property, such as mortgage holders. Occupants of the property may also receive a copy of the notice. If he is unable to serve notice on the owner, the officer must placard the property with the notice in a conspicuous place.

**Violation Order: 31(7), (8), (9) and (10)**

After giving the owner an opportunity to appear before the officer and make representations regarding the matters described in the notice, the officer may serve him with an order, either personally or by registered mail, or failing that, by placarding the property. The order must describe the repairs to be effected and give a time limit for compliance and also for the lodging of an appeal. It must state that the municipality may carry out the repairs at the owner's expense if he does not comply within the specified time. The order may be registered in the registry office or land titles office and may subsequently be discharged by a certificate from the municipal clerk when the requirements have been met.

**Property Standards Committee: 31(11)– (15)**

A property standards committee must be established by the municipal council to hear appeals from an order of the property standards officer. It is composed of at least three people, appointed by council, who hold office for such terms as may be set out in the property standards by-law. The members elect a chairman and make provision for a secretary who must keep all records on file. They may receive compensation as provided by council.

A majority of the committee constitutes a quorum and the committee may adopt its own rules of procedure.

**Appeal to the Committee: 31(16) and (17)**

When an owner or occupant is not satisfied with the terms of an order, he may appeal to the property standards committee by sending notice of appeal by registered mail to the secretary, within 14 days after service of the order. If no appeal is launched within the 14 day period, the order is considered to be confirmed.

The committee must hear the appeal and has the same powers as the property standards officer; it may confirm, quash or modify the order and it may extend the time for complying with the order.

**Appeal from a Committee Decision: 31(18)**

A decision of the property standards committee may be appealed to a judge of the county or district court, by notifying the municipal clerk in writing and by applying for an appointment within 14 days of the committee's decision. The appellant may be the owner or the municipality or any person affected by the order. The judge appoints a time for a hearing and he has the same powers as the committee. His decision is final and binding.

**Power of Municipality to Repair or Demolish: 31(20)**

If the owner or occupant of property fails to comply with an order, the municipality has the

right to demolish or repair the structure and is not liable to compensate the owner or anyone else by reason of such actions.

**Certificate of Compliance: 31(21)**

At the request of the owner, the property standards officer must issue a certificate of compliance, if upon inspection the property complies with the property standards by-law. The municipality may prescribe a fee payable for a certificate of compliance issued at the owner's request. The officer may also issue a certificate on his own initiative, but no fee may then be imposed.

**Emergency Order: 31(23)**

This subsection is a new provision. It enables a property standards officer to issue an emergency order requiring remedial repairs or other work to be performed immediately where there is a danger to the health or safety of any person.

**Emergency Powers: 31(24)**

Operating under an emergency order (31(23)), this provision empowers the property standards officer to take whatever steps are necessary to terminate the danger, including entering upon the property.

**Compensation: 31(25)**

Actions by the officer of the municipality or anyone acting on its behalf are not liable for compensation in the reasonable use of powers under subsection (24).

**Service of Order and Statement: 31(26)**

Where actions have been taken to terminate a danger, the order under subsection (23) must be sent to the property owner, along with a statement of repairs and costs that have been carried out by the municipality.

**Service of Statement: 31(27)**

Where the order has been served, **before** actions have been taken to terminate a danger, a statement of repairs and costs must be sent to the property owner in accordance with the provisions of subsections 31(7), (8) and (9).

**Application to County Judge: 31(28)**

Application must be made to a judge of a county or district court for a court order confirming the order issued under subsection (24). Procedures for this matter are set out in the legislation.

**Disposition by Judge: 31(29)**

This subsection establishes the disposition of the application by the court as final and binding.

**Recovery of Expenses: 31(30)**

Municipalities may recover expenses required to terminate a danger subject to existing provisions of the **Municipal Act**.

## SECTION 32. GRANTS OR LOANS FOR REPAIR

When a property standards by-law is in force, council may pass a by-law providing for the making of loans to persons who have received a notice to undertake repairs or clear their property. The amount of these loans, with interest, may be recoverable over a period of time as if they were part of municipal property taxes. The municipal clerk is required to register in the registry or land titles office a certificate showing the amount loaned and the rate of interest. When the loan has been repaid in full, the clerk must register another certificate to that effect, thereby discharging the charge or lien against the property. The by-law may also provide for making grants under similar circumstances.

## SECTION 33. DEMOLITION CONTROL FOR RESIDENTIAL PROPERTY

**Designation of Demolition Control Areas: 33(2)**

When a property standards by-law is in force in a municipality, the council may designate any area affected by the by-law as an area of demolition control. No residential property may then be demolished in whole or in part, in the demolition control area, except under a permit issued by the council.

This section is included in the Act to give a council some control over the premature demolition of sound housing stock.

**Demolition Permit where no New Building Permit has been Issued: 33(3)**

When **no** new building permit has been issued by the council, a demolition permit for an old building on the same site may either be issued or refused.

**Appeal to Ontario Municipal Board: 33(4) and (5)**

Where an applicant has been refused a demolition permit or where council has taken no action within 30 days of the application, an appeal may be made to the Municipal Board. The decision of the Board is final. Notice of the appeal must be given in accordance with whatever directions the Board may give.

**Demolition Permit Where New Building Permit has been Issued: 33(6) and (7)**

When a building permit for a new building has been issued by the council, a demolition permit for an existing building on the same site may **not** be refused. However, the permit may be issued on the condition that the new building must be substantially completed within a certain time period, not less than two years from the demolition. If the condition is not fulfilled by the applicant, the municipality is entitled to collect a sum not exceeding $20,000 per dwelling unit in the demolished building, and this sum is recoverable in the same manner as municipal taxes and is a lien or charge on the property.

**Relief from Conditions of Demolition Permit: 33(10) and (11)**

If the condition subsequently appears too onerous, the developer may apply to council for relief, not less than 60 days before the expiration of the time for completion of the new

building. Council may reject the application or may extend the time limit or may relieve the applicant from the obligation to build a new building.

**Appeal to Ontario Municipal Board: 33(9) and (12)**

If he is dissatisfied with the conditions imposed by council on the demolition permit, an applicant may appeal to the Municipal Board and the Board must hear the appeal.

An applicant is also entitled to appeal to the Municipal Board if he is not satisfied with council's response to his request for relief from the conditions of the demolition permit, or if council neglects to make a decision within 30 days of the application for relief.

**Enforcement: 33(13)**

Demolition in violation of a demolition control by-law is punishable by a fine of up to $20,000 per dwelling unit if the property is partially or totally destroyed, or by imprisonment for up to six months, or both.

**Standards for Health and Safety Remain in Force: 33(14)**

The provisions of a demolition control by-law do not absolve property owners from compliance with any by-law or provincial Act relating to the health and safety of the occupants, buildings and structures.

**Demolition Permit Application Delays Enforcement of Property Standards By-law: 33(15)**

An application for a demolition permit operates to delay any proceedings that may have been taken by a council against a property owner to enforce a property standards by-law. Until the council disposes of the demolition permit application or until the Municipal Board has dealt with an appeal, a property standards by-law may not be enforced against that property.

**Building Code Permit Not Required: 33(16)**

If a person has obtained a demolition permit required by a demolition control by-law, it is not necessary to obtain a separate permit that may be required by the Building Code.

# PART V: LAND USE CONTROLS AND RELATED ADMINISTRATION

## SECTION 34. ZONING BY-LAWS

This part of the **Planning Act** establishes a development control system based on the use of long and short term zoning procedures. For the first time, different types of zoning by-laws are defined. The Act enables municipalities to pass conventional zoning by-laws and two new types of by-laws: holding and bonus by-laws. The introduction of short-term zoning procedures includes both interim control and temporary by-laws. The use of site plan control by-laws and parkland dedication, as provided in sections 40 and 41 of the former Act, are retained.

This part of the Act also establishes procedures for, and the powers of, committees of adjustment. In addition, a number of other land use controls and related administrative procedures deal with land reserved for public purposes, metric conversion, mobile homes, Minister's orders and right of entry.

### General: 34(1)

A zoning by-law restricts the use of land and the manner in which buildings or structures are located on a property. The restrictions on the use of land are designed to separate incompatible uses. For instance, factories can be prohibited from residential areas and houses disallowed in industrial areas. The by-law may be quite specific in differentiating between permitted and prohibited uses. A dry cleaning pick-up station, for example, may be permitted in a commercial zone whereas the actual dry cleaning operation may be prohibited. Further restrictions may specify the types of dwellings permitted in each "zone", the floor area, the parking and loading requirements, the maximum building height, and the minimum setback from the street.

"Density" is typically one of the features regulated in a zoning by-law. When applied to residential development, it means the number of dwellings per hectare. Alternatively, a density may be expressed as a number of square metres of floor area per unit of land area. The number expressing that ratio is called the "floor space index". "High density" means a large number of dwelling units in relation to the land area; this usually means high-rise apartments, but the two terms are not synonymous: a "high density" may be achieved if small houses or low-rise apartments are built close together.

Development may also be regulated on the basis of the availability of municipal services such as water supply and sewerage facilities.

### Difference between a Zoning By-law and an Official Plan

An official plan is a statement of the goals and objectives of a municipality and consists of a number of policies which guide public and private decision makers on the optimum use of land.

A zoning by-law, on the other hand, implements the official plan's intent by specifically regulating what may or may not be done on individual parcels of land. While an official plan shows the general relationship of different land use areas, the zoning by-law map shows these areas and boundaries precisely and all its regulations are stated exactly. If a proposed development does not comply with all the provisions of the zoning by-law, an amendment to the by-law may be needed before the development can proceed. Some zoning by-law amendments require no amendment to the official plan, because they conform with the municipality's general policies. In other cases, a zoning amendment may involve a policy

change and an amendment to the official plan would be needed before the by-law could be amended.

**Legal Non-Conforming Uses: 34(9)**

A zoning by-law only applies to development occurring after the passage of the by-law. Existing uses may continue in existence as long as they remain unchanged.

However, any change in use or modification to an existing building must conform to the zoning by-law or must be sanctioned by the committee of adjustment (see page 25).

If a building permit has been issued prior to the passage of a zoning by-law, the by-law may not prevent development in accordance with the permit, provided the permit has not been revoked within six months, under section 6 of the **Building Code Act**.

## PROCEDURE FOR ZONING BY-LAWS*

**Preliminary Meeting and Information: 34(12), (13), (14), (15)**

Before passing a zoning by-law, council must hold a public meeting, advertised with at least 30 days notice. Requirements for the notice of the meeting and its circulation must conform to standards prescribed in a Regulation. The meeting may be advertised in a newspaper or a notice of the meeting may be sent to all property owners provided a sign is erected on the site or a notice may be sent to all persons (owners and tenants) shown on the assessment roll. In addition, the notice must be sent to all other persons who asked to be notified. Various agencies such as school boards, utilities and affected government agencies are also entitled to notification provided council considers they have an interest in the by-laws. Anyone attending the public meeting must be given an apportunity to speak on the by-laws.

As an alternative to the notification requirements in subsections 34(12) and (13), subsection 34(14) provides that a municipality may process a proposed zoning by-law in accordance with its own public involvement procedures, provided they are established in the municipal official plan (see also section 16).

**Appeal if Council Fails to Act: 34(11)**

If a person applies to council to have the zoning by-law amended and council refuses or does not act, the applicant may appeal to the Municipal Board, after waiting 30 days from the date of application. The Board may dismiss the appeal, amend the by-law or may direct the council to amend the zoning by-law.

**Further Notice: 34(16)**

If a change is made in the proposed zoning by-law after the meeting, the council has the discretion to decide whether or not to give further notice of the change. However, if the change is more than a minor one, council would be well advised to hold another public meeting.

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* Most zoning by-laws are in fact zoning by-law amendments, i.e. amendments to a parent by-law. The procedure is the same for amendments as for the parent by-law.

**When the By-law is Passed: 34(17)**

When the council passes a zoning by-law, the clerk must notify the persons and agencies prescribed by regulation, within 15 days of the passing of the by-law.

**Appeal When By-law is Passed: 34(18)**

If council has passed a zoning by-law, any person including the Minister may appeal against it by filing an appeal with the clerk within 35 days of the passing of the by-law. The person filing the appeal must set out the reasons for the objection.

**When By-law Deemed in Force: 34(19), (20)**

When **no** appeal is filed, a zoning by-law comes into effect on the day of passing. The clerk must prepare an affadavit or declaration that no appeal was filed and that proper notice was given.

**Forwarding of Record: 34(21)**

Where an appeal is filed, the clerk must forward the appeal, together with the by-law and other information set out in the legislation to the Municipal Board.

**Parties to an Appeal: 34(22)– (24)**

The parties to an appeal are the appellant, the municipality and any other person or agency added by the Municipal Board. The Board may add other persons, including the Minister, as parties to the appeal. Persons who are not a party to the appeal may be permitted to make representations at the hearing.

**OMB Hearing, Dismissal and Decision: 34(25)– (27)**

The Ontario Municipal Board will normally hold a hearing, but it has the option of dismissing the appeal without a hearing. If the Board does this it must give the appellant an opportunity to make a representation as to the merits of the appeal. When a hearing is held, notice is sent to the parties to the appeal and to anyone else the Board considers appropriate.

The Municipal Board may dismiss an appeal or allow it or allow it in part. It may direct the council to repeal the by-law or to amend it in accordance with the Board's order. When the Board directs council to amend a by-law, the provisions for notice, public meetings and appeals are not applicable.

**Provincial Interest: 34(28)-(30)**

If the Minister defines a provincial interest in a matter appealed to the Municipal Board, he may so advise the Board at least 30 days in advance of the hearing. The Board then holds a hearing and makes a decision.

However Cabinet may confirm, vary or rescind the decision of the Municipal Board and is empowered to repeal the by-law or amend it.

**Date of Coming into Force: 34(31)**

When a by-law has been appealed, it does not come into force until all appeals have been disposed of, but the effective date is then retroactively deemed to be the date it was passed, except for any part amended or repealed at the direction of the Municipal Board or the Cabinet, as mentioned in subsections 27 and 30.

## SECTION 35. HOLDING PROVISIONS

In order to show a future zoning designation while retaining control of the timing of development, a "holding" designation may be used, in the form of a symbol "H" or "h" as a prefix or suffix to the zone designation. As long as the "H" is retained, the use of the land is limited to the existing use. Holding zoning can only be used if a municipality has official plan policies governing the use of this type of by-law. It could be used as a tool in phasing the development of land at the edge of an urban area or in the redevelopment of an older area.

Removal of the "H" or "h" is done by an amending by-law, but there are different notice and public meeting requirements, since all the details of the zoning other than the timing will previously have been established. Rather, the council must give notice of its intention to pass the amending by-law removing the holding symbol, and this must be done in accordance with the regulation. An appeal procedure is available in case a council refuses to remove a holding designation within 30 days of a request.

## SECTION 36. BONUS PROVISIONS

Bonus by-laws are designed to allow an increase in height or density in exchange for something the municipality wants and the developer of a property can provide. For example, in exchange for conserving an adjoining historic building or providing some amenity such as nearby open space, a developer may be allowed to build at a higher density than otherwise provided by the by-law. The developer's role is guaranteed through an agreement which is registered against the land and enforceable on subsequent owners. Bonus zoning also requires official plan policies setting out how this type of control will be used.

## SECTION 37. INTERIM CONTROL BY-LAWS

In order to control development in an area where a municipality is reviewing its long-term planning, an interim control by-law may be passed, effective for up to a year and renewable for a further year so that the maximum period it is in effect is two years from its imposition. After that, at least three years must elapse before another interim control by-law may be passed covering any part of the same area. An interim control by-law must be preceded by a by-law or resolution, directing that a study be undertaken of planning policies in the affected area.

In contrast with the process for a normal zoning by-law, an interim control by-law does **not** require prior public notice. However, affected persons and agencies must be notified within 30 days, and have 60 days from the passing of the by-law to appeal, giving reasons. The same provisions for notification applies to an extension of interim control. The procedure for dealing with appeals is the same as for a zoning by-law.

When an interim control by-law runs out, the prior zoning automatically applies again, unless a new zoning by-law is passed.

The protection extended to legal non-conforming uses in subsection 34(9) also applies to existing uses when an interim control by-law is introduced.

## SECTION 38. TEMPORARY USE PROVISIONS

A zoning by-law may allow certain uses to be established for a limited period of time, up to a maximum of three years. A use introduced under such a temporary use by-law does not acquire the status of a legal non-conforming use at the expiration of the by-law. At the end of the stated period, it must cease, unless the council passes a by-law to extend the temporary use period. There is no limit on the number of extensions that may be granted but each extension is for a maximum of three years. This type of by-law may be used, for example, to allow a vacant lot to be temporarily used for parking.

## SECTION 39. CASH-IN-LIEU OF PARKING FACILITIES

In some circumstances, instead of requiring parking on every lot, a municipality may want to provide parking in a central location to serve a number of properties in the vicinity. The council may enter into an agreement with property owners to exempt them from the parking requirements in the zoning by-law, in return for one or more cash payments. The funds so acquired must be kept in a special account to be used only for the provision of parking facilities.

## SECTION 40. SITE PLAN CONTROL

A local municipal council may pass a by-law to designate a site plan control area, if the area is shown or described as a proposed site plan control area in the official plan. The area may be designated in map form or by reference to a zoning designation.

### Two Types of Site Plans: 40(4)

In a site plan control area, no development* may occur unless council has approved the site plans. Council may determine if it wants one or both of two types of site plans described below.

The first type shows no elevations or cross-sections but shows, in plan, the location of all buildings and facilities, including parking and loading areas, ramps and driveways, traffic signs, walkways, outside lighting, landscaping, garbage collection and storage facilities, drainage easements and grading for storm water runoff.

The second type is for all types of buildings and for multiple dwelling complexes of 25 or more units. It includes plan, elevation and cross-section views to show the relationship of the buildings in three dimensions as well as the above mentioned matters.

### Detailed Drawings for Residential Buildings: 40(5)

The second type of site plan may be required for residential buildings of less than 25 units if it is located in an area specifically designated in the official plan as an area where such drawings may be required. This may occur, for example, in a redevelopment area where a small infill housing project is being built and the municipality wants to preserve the existing character of the area.

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* "Development" is defined in the Act. It includes, among other things, commercial parking lots, mobile home parks and trailer parks.

**Height or Density Control not through Site Plan Control: 40(6)**

Site plan control may not be used to limit the height or density of buildings. Those basic rights to development are established in the zoning by-law.

**Conditions of Approval, Agreements: 40(7), (10) and (11)**

The municipality may require the developer to provide and maintain, at no expense to the municipality, the required facilities and to look after snow removal from walkways, parking and loading areas, driveways and access ramps. All the site plan requirements may be put in an agreement between the developer and the municipality, which may be registered against the land and enforced against present and future owners (see also section 325 of the **Municipal Act**).

**Widenings of County, Regional etc. Highways: 40(8)**

A county, regional, metropolitan or district municipality may require a highway widening at no expense for a highway under its jurisdiction. Municipalities may enter into agreements dealing with highway widenings.

**Limitation on Highway Widenings: 40(9)**

The requirement to provide a highway widening only applies if the widening is shown or described in an official plan.

**Appeal: 40(12)**

If, 30 days after a developer has submitted site plans to a council, the plans are not approved or are approved with changes or conditions that are unsatisfactory, the developer may ask to have the plans referred to the Municipal Board. The request must be made in writing to the municipal clerk and to the Board secretary. The Board holds a hearing and decides the matter. Its decision is final. No other persons may appeal the site plan approval or conditions.

**Exemptions: 40(13)(a)**

Council may designate, by by-law, any class of development for which no site plans are required. For example, low density residential or senior citizens' housing could be exempted.

**Delegation of Authority of Power: 40(13)(b)**

Council may delegate any of its authority or power regarding site plan control to a committee of council or to an appointed official. The only exception is the authority to exempt certain classes of development from the requirement for site plans, because this must be done by a by-law.

**Section 35a of Former Planning Act: 40(14) and (15)**

Any site plan control agreement introduced under the old Planning Act continues to be in effect.

## SECTION 41. PARKLAND CONVEYANCE BY-LAW FOR 5% CONVEYANCE: 41(1)

A municipal council may pass a by-law requiring a developer to give to the municipality, for park purposes, up to five per cent of the land he proposes to develop or redevelop for any purpose other than commercial or industrial development. The maximum that may be required from a commercial or industrial project is two per cent. This condition may be imposed on development or redevelopment in the entire municipality or in any defined area or areas.

### Alternative Park Requirement: 41(2)-(4)

As an alternative to taking five per cent of the land area, council may pass a by-law relating the parkland requirement to the number of dwelling units to be built on the land. The maximum amount that may be required is one hectare for every 300 dwelling units. This alternative is only available to a municipality which has an official plan containing provisions relating to parkland requirements.

### Use and Sale of Land: 41(5)

Land conveyed to the municipality for park purposes must be used for park or other public recreational purposes, but it may be sold at any time.

### Cash-in-lieu of Conveyance: 41(6) and (7)

A municipal council may require the cash value of the land instead of a park conveyance. The value of the land shall be determined as of the day before the day of the issuance of the building permit. If agreement is not reached on the value of the land, either party may ask the Land Compensation Board* to determine the value. Subsection 50(12) of the **Planning Act** applies to these funds, which means that they must be placed in a special account reserved for parkland acquisition or for other public recreational purposes. These funds may also be used for the acquisition of land for other public purposes or for the improvement of parklands.

### Previous Park Contribution: 41(8), (9)

If a payment or park dedication was made when land was originally subdivided and/or developed, an additional payment or dedication may be required upon subsequent redevelopment but the earlier contribution must be taken into consideration when determining the current land or cash contribution. In any event, the combined contribution may not exceed five per cent. If agreement is not reached on a fair current requirement in these circumstances, the Municipal Board may be asked to make a final determination in the matter.

## SECTION 42. METRIC CONVERSION

A zoning by-law amendment designed only to convert measurements in an existing by-law to metric units is not required to be advertised or approved in the usual manner, as long as the rounding off is not greater than a half metre or square metre, or not more than five per

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* The Land Compensation Board, even though still cited in the Planning Act, has now been abolished and its function assumed by the Ontario Municipal Board.

cent of the measurement. Any land, building or structure which conformed to the old by-law cannot be made non-conforming simply as a result of the change to the metric measurement.

## SECTION 43. ESTABLISHMENT OF COMMITTEE OF ADJUSTMENT 43(1), (2)

Every municipality which has a zoning by-law is entitled to establish a committee of adjustment, composed of not fewer than three persons, and appointed by the council. A certified copy of the by-law establishing the committee must be sent to the Minister by registered mail within 30 days of its passing.

### Term of Office: 43(3), (4)

Members of the committee who are members of council are appointed annually. Others are appointed for the length of the term of the council appointing them. They hold office until their successors are appointed and are eligible for reappointment. If a member ceases to be a member before the expiration of his term, the council must appoint another person to serve the unexpired portion of the term.

### Quorum and Vacancy: 43(5), (6)

Where a committee is composed of three members, two members constitute a quorum, and where a committee is composed of more than three members, three members constitute a quorum. A vacancy in the membership does not impair the powers of the committee or the remaining members, provided there is a quorum.

### Chairman: 43(7)

The members of the committee must elect one of themselves as chairman. In the chairman's absence, another member may be appointed as temporary chairman.

### Employees: 43(8)

The committee must appoint a secretary-treasurer*, who may be one of their number, and may engage staff or consultants.

### Compensation: 43(9)

Members of the committee may be paid whatever amount council decides.

### Records of Official Business: 43(10)

The secretary-treasurer is required to maintain a record of all applications and other official business and to make these records available to the public for inspection at all reasonable hours.

### Rules of Procedure: 43(11)

In addition to the requirements set out in the Act, the committee must follow the rules of procedure prescribed by the Minister.

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* Section 27 of the **Interpretation Act** provides that the power in any other Act to appoint a public officer also includes the power to appoint a deputy who may act in his or her place.

## SECTION 44. POWERS OF THE COMMITTEE OF ADJUSTMENT TO GRANT MINOR VARIANCES*

### Minor Variance: 44(1), (3)

The committee of adjustment may authorize minor variances from the provisions of a zoning by-law, or an interim control by-law. Minor variances from any other by-law implementing an official plan may also be granted if the council passes a by-law to that effect. For example, the council could pass a by-law to authorize the committee to grant minor variances from a property standards by-law. A minor variance should only be granted if, in the opinion of the committee, the general intent and purpose of the by-law and the official plan are maintained. An example of such a minor variance might be permission to build a single family dwelling on a lot that is only 14 metres wide, where the by-law requires a minimum width of 15 metres.

### Extension of a Legal Non-Conforming Use: 44(2)(a)(i)

The committee of adjustment may allow the enlargement or extension of a building or structure that is used for a purpose prohibited by the zoning by-law. However, the use must have been in existence when the by-law was passed and continued for the same purpose and in the same manner, or was permitted use under clause (ii). This authority is limited to permitting the extension of buildings or structures on land owned and used in connection with the use being expanded, on the day the zoning by-law was passed. More than one change for extension or enlargement may be granted.

### Change to Similar or More Compatible Use: 44(2)(a)(ii)

The committee of adjustment may permit a legal non-conforming use to be changed to another use similar to the existing use or more compatible with the uses permitted in the by-law than the existing use. In order to be eligible, the existing use must have been in existence when the by-law was passed and must have continued in the same use until the date of application to the committee. Again, more than one change in the use of a non-conforming use may be granted.

### Permitted Uses Defined in General Terms: 44(2)(b)

Where the uses of land, buildings or structures permitted in the zoning by-law are defined in general terms, the committee may decide whether any specific use conforms in their opinion with the uses described in the by-law. Nowadays, this is a little-used clause because by-laws are usually drafted with permitted uses defined quite specifically. It was common in the past, for example, for a by-law simply to state that commercial uses would be permitted in a commercial zone. This often resulted in argument over whether a specific use really was commercial or something similar, e.g. industrial in the case of a dry cleaning establishment.

### Hearing: 44(4), (6)

The hearing on any application must be held within 30 days of receipt of the application by the secretary-treasurer. Notice of the hearing must be given in accordance with the

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* Some committees of adjustment may also have the power to grant consents. See section 53.

prescribed regulation. Every hearing must be held in public and the committee must hear anyone who wants to be heard in favour or against the application. The committee may adjourn a hearing and reconvene at some later time.

**Decision: 44(8)– (11)**

Every decision of the committee must be in writing and must set out reasons for the decision. It must be signed by the members who concur in the decision. In order to be valid, a decision must be concurred in by a majority of the members of the committee who heard the application.

A decision may be made subject to any terms and conditions the committee considers advisable. (This provision applies specifically to zoning by-law related decisions; consents for land severances are subject to subsections 52(2)-(21)—see page 34.)

Within 10 days of a decision, the secretary-treasurer must send a certified copy to the applicant and to every person who appeared at the hearing and asked for notice of the decision. The notice must state the last day for appealing the decision to the Municipal Board.

If the Minister is concerned about the decisions being made by a committee, he may notify it by registered mail that a certified copy of each decision must also be sent to him.

The copy of the notice sent to the Minister must also include the application, the hearing minutes, relevant sketches or maps and a sworn statement that all the required notices of the decision have been sent. The Minister may request other information as he sees fit.

**Appeal: 44(12), (13)**

Anyone who has an interest in the matter may appeal a committee of adjustment decision, within 30 days of the decision, by sending a notice of appeal to the secretary-treasurer by registered mail. The appeal must state the reasons for the objection and must be accompanied by the Municipal Board's prescribed fee. (Currently it is $100.) The secretary-treasurer must forward the appeal notice and fee to the Board by registered mail, together with all the relevant information.

**Committee Decision Final: 44(14), (15)**

A committee decision becomes final and binding if no appeal is lodged within 30 days of the decision or if an appeal is withdrawn. A copy of the decision is filed with the municipal clerk and the applicant is notified by the secretary-treasurer of the committee.

**Hearing and Board Decision: 44(16)-(18)**

Unless the Board finds that the objection is insufficient, it will hold a hearing. Notice of the hearing is sent to all affected parties, in the manner determined by the Board. If the appeal is dismissed without a hearing, the Board must give its reasons in writing to the appellant.

The Municipal Board may make any decision on an appeal which the committee could have made.

**Notice of Appeal Decision: 44(19), (20)**

When the Municipal Board makes an order on an appeal, a copy is sent to the applicant, the appellant and the secretary-treasurer of the committee. The secretary-treasurer must in turn file a copy of the order with the clerk of the municipality.

## SECTION 45. MOBILE HOMES*

This section applies to mobile homes established on or after June 1, 1977. Many areas of the Province still have only minimal local regulations and section 45 ensures that groups of mobile homes, whether in a proper mobile home park or not, are adequately controlled.

Individual mobile homes may be located on lots subject to similar restrictions as other dwellings, provided that not more than one mobile home is located on a lot.

In municipalities, mobile home parks, or any grouping of mobile homes on a single parcel of land, may only be developed or expanded on land specifically zoned to permit this. Where there is no municipal organization, mobile home development may be controlled either by a Minister's zoning order or by permit under the **Public Lands Act.**

## SECTION 46. POWER OF MINISTER: ZONING, DEEMING PLANS OF SUBDIVISION

**Zoning and Subdivision Control: 46(1), (8)**

The Minister may, by order, exercise any of the zoning and subdivision control powers of a municipal council with respect to any land in Ontario. In contrast with a municipal zoning by-law, a Minister's zoning order does not require the approval of the Municipal Board and the Minister is not bound to hold a prior public meeting before imposing the order. A Minister's order may be revoked or amended by another order.

**Minor Variance: 46(2)**

The Minister may also exercise the powers of a committee of adjustment described in subsections 44(1) and 44(2). The Minister may allow minor variances from the order provisions, etc. but he is not obliged to hold a hearing within 30 days and decisions are not subject to appeal.

**Order Prevails over Local By-law: 46(3)**

In the event of a conflict between a zoning order and a municipal zoning by-law, the order prevails to the extent of such conflict, but in all other regards, the by-law remains in full force.

**Zoning Order may be Deemed a Zoning By-law: 46(4)**

When a zoning order is imposed in an organized municipality, the Minister can declare, in the order, that it is for all practical purposes deemed to be a zoning by-law of the municipality. Section 24 of the Act, requiring all zoning by-laws to conform to an official plan in effect, does not apply to a Minister's order.

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* See also section 47, page 28.

**Notice: 46(5), (6), (7), (9)**

No notice or hearing is required prior to the making of an order, but the Minister is required to give notice of the order within 30 days of making it. Prior to amending or revoking an order, the Minister must give notice in an appropriate manner, and must allow enough time to permit the submission of representations.

An order deeming a plan of subdivision not to be a registered plan must be registered in the proper registry office. A duplicate or certified copy must be lodged in the office of the clerk of each affected municipality, or, if the land affected is in unorganized territory, in the proper registry office.

**Application to Amend a Zoning Order: 46(10)– (14)**

Where an application is made to amend or revoke a Minister's zoning order, the Minister may ask the Municipal Board to hold a hearing on the application. A hearing request is not obligatory if it is felt that the request is not genuine. The Minister then gives notice of the application and the hearing as directed by the Municipal Board. After hearing any submissions, the Municipal Board makes a decision to either amend or revoke the order or refuse to amend or revoke the order and the Minister gives effect to that decision. A copy of the decision is sent to each person who appeared at the hearing and made representation and to any person who in writing requests a copy.

**Provincial Interest: 46(15)– (17)**

If the Minister considers a matter of provincial interest is affected, as a result of the requested revocation or amendment to the order, he may so advise the Board at least 30 days in advance of the hearing. The Board then holds their hearing and makes a decision which the Minister cannot give effect to unless confirmed by Cabinet.

The Cabinet may confirm, vary or rescind the decision of the Board and may direct the Minister to amend or revoke the order.

**Deeming Order like Deeming By-law: 46(18)**

A Minister's order deeming a plan of subdivision not to be a registered plan has the same effect as a by-law passed by a municipal council to deem a plan of subdivision not to be a registered plan.

## SECTION 47. WHERE LICENCE ETC. NOT TO BE ISSUED

No licence, permit, approval or permission may be issued and no service or utility (such as water or electricity) may be provided by any governmental or quasi-governmental authority if the proposed use or construction would conflict with the mobile home provisions (section 45) of this Act or with a Minister's order (section 46).

## SECTION 48. ENTRY AND INSPECTION

An officer appointed to enforce a zoning by-law or a Minister's zoning order is authorized to enter and inspect any property on which it is believed a zoning by-law or order is being contravened. The inspection must occur at a reasonable time and the officer must show identification.

Entry inside a dwelling is not permitted without the occupier's consent, unless the officer has a search warrant.

# PART VI: SUBDIVISION OF LAND

Part VI brings together all of the provisions relating to the subdivision of land: the provisions for subdivision control, for approving plans of subdivision and for the granting of consents. Although a few changes have been made to the present subdivision provisions, the legislation is basically the same as is now provided for in sections 29 and 33. The main difference is that the sections have been reordered so that all the land subdivision provisions are brought together for easier understanding.

## SECTION 49: SUBDIVISION CONTROL

### General

If a person wishes to divide land into two or more parcels for the purpose of selling, it is necessary either to register a plan of subdivision on the land or else to obtain what is called a consent to a land severance. (Section 52: **Consents**) This requirement applies throughout Ontario but is not applicable if the land is being acquired or disposed of by a federal, provincial, municipal government or Ontario Hydro or it is acquired for the construction of a gas or oil pipeline. If the entire property is being sold at one time to one purchaser, the requirement does not apply, since the land remains essentially a single parcel, i.e. the seller does not retain any abutting land.

### Registered Plan of Subdivision

For the purpose of the **Planning Act**, a registered plan of subdivision is a plan approved by the Minister* (or his delegate) and registered under the **Registry Act** or the **Land Titles Act**. In addition, some older plans, most of which were registered before the introduction of the **Planning Act** in 1946, may also qualify as registered plans. A plan of subdivision essentially shows lots on which houses or other buildings are to be erected as well as streets, parks, etc.

### Consent: 49(1), 52

A consent to a land severance is an authorization to separate one parcel of land from another adjoining parcel in order to sell it or mortgage it or in order to lease it for more than 21 years. A consent can be obtained from a municipal council, appointed officer, a committee of adjustment, a land division committee, a planning board or the Minister, depending on the jurisdiction in the area where the parcel is situated. The new Act assigns consent granting authority directly to the councils of regions, counties, cities outside regions and separated towns. Regional municipalities or cities in northern Ontario are responsible for consents while the Minister grants consents for all other areas. (See section 52, Consents, page 33).

### Special Exemption Under Conservation Authorities Act, Ontario Hydro: 49(3)(c)(e)

Land acquired for flood control, erosion control, bank stabilization, shoreline management or preservation of environmentally sensitive lands under projects approved by the Ministry of Natural Resources and declared accordingly by a Conservation Authority, is now exempt from subdivision control, as is Ontario Hydro.

### Deeming Plans: 49(4), (23)– (25)

Some plans of subdivision were registered a long time ago, some as long as 150 years, and

* or exceptionally by the Municipal Board if the plan has been referred to it.

their design or lot sizes may not be appropriate to fit in with current planning requirements. A municipal council is empowered to pass a by-law deeming any plan of subdivision at least eight years old not to be registered for the purpose of subdivision control. The owner of the land is thereby required to obtain approval for a new plan or else to obtain a consent before any portion can be sold.

**Part-Lot Control: 49(5)**

It is not permitted to sell a portion of a lot on a registered plan of subdivision except by obtaining a consent to a land severance. The same exceptions apply as with subdivision control with regard to government transactions and transmission lines and with regard to the disposal of an entire ownership. In addition, utility lines are also exempt from part-lot control.

**Plans Excluded from Part-Lot Control: 49(7)**

A municipal council may, by by-law, designate a certain plan or plans of subdivision where part-lot control does not apply. The by-law must be approved by the Minister but it may be repealed or amended to delete part of the affected lands without the Minister's approval.

An exemption from part-lot control is appropriate, for example, when semi-detached houses are to be built which require lots to be split in half so that each portion of the building will have its own parcel.

**Building Leases and Drainage Agreements: 49(9)–(10)**

An agreement to permit the lease of part of a building or structure is not affected by the restrictions on subdivision. This enables long-term leases for stores in commercial complexes, such as shopping centres. Agreements between neighbouring landowners for drainage works are similarly excluded.

**ARDA Lands Excepted: 49(11)**

Subdivision control does not apply to lands purchased or leased from the Agricultural Rehabilitation and Development Directorate of Ontario, provided the land is all the land acquired by the Directorate under a registered deed or transfer.

**A Consent is a Consent, Regardless of Abutting Land: 49(12), (13)**

Once a consent is given, no new consent is required for the same parcel in subsequent transfers or ownership. Without this clause, a person owning abutting land would need a consent to sell a lot previously acquired, which had been created by consent.

If for any reason the approving authority does not wish to permit subsequent sales without a new consent — for example, if a severance has been granted specifically for the purpose of adding a piece of land to an adjoining lot — it may stipulate that subsections 3 or 5 apply, meaning that in this case a new consent **would** be required to permit a subsequent sale of the severed land.

**Simultaneous Conveyances, Power of Appointment, etc.: 49(15)–(18)**

Over the years, imaginative ways have been found to subdivide land without going through the approval process required by the **Planning Act** by convincing the courts that certain

transactions did not constitute subdivision for the purpose of the **Planning Act.** In response to these "loopholes", the Act now refers to forms of conveying land other than by simple straightforward sale. The names or descriptions of these techniques are unfamiliar to most people. They include such terms as "power of appointment", "partial discharge", and "simultaneous conveyance". The Act now includes them all as forms of conveying land subject to subdivision control and part-lot control and, therefore, requiring approval, unless otherwise specified in the legislation.

**Partition Act: 49(20)**

The **Partition Act** is intended to permit the equitable division of land when a partnership is being dissolved. It may not be used to create "checkerboard" subdivisions, circumventing the provisions of the **Planning Act.**

**Conveyance Contrary to the Provisions of this Act: 49(21)**

An attempted conveyance contrary to the provisions of this section of the **Planning Act** is illegal and any such transaction would not be valid. However, an agreement to purchase subject to the condition that the land be legally separated in accordance with the Act would be valid.

**Copies of Deeming By-law to Minister's and Registry Offices: 49(22)- (24)**

A certified copy or duplicate of every deeming by-law must be lodged by the municipal clerk in the Minister's office and another must be registered by him in the local registry office or land titles office in order to give effect to the by-law.

**Notice of Deeming By-law: 49(25), (26)**

Within 30 days of passing a deeming by-law, the council must notify every landowner to which it applies. Council is obliged to hear any recipient of the notice who, within 20 days, asks for the by-law to be repealed or amended.

**SECTION 50. PLANS OF SUBDIVISION**

**Application for Approval: 50(1), (2)**

The process of provincial approval of a plan of subdivision begins with the submission of a draft plan to the Minister.* It must show the outline of the lands, the location of any proposed roads, the approximate dimensions of the proposed lots and any other information necessary to permit an evaluation of the proposal.

**Review of Application: 50(3), (4)**

Upon receipt, an application is given an initial examination and, if it is not in conflict with an official plan or clearly contrary to a provincial interest, it is circulated to the local municipality and to other ministries and agencies which may have an interest in, or be affected by, the approval. A list of matters that should be regarded in the review is set out in subsection (4).

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* or to a delegated municipality. (See page 2, section 4, Delegation of Minister's Powers).

**Draft Approval: 50(5)**

When satisfied with the draft plan, the Minister may give it draft approval, or "approval in principle" subject to whatever conditions that are reasonable in the circumstance. The conditions may include, among other matters, that 5% of the land area be given for park purposes*, that sufficient land be dedicated for roads and road widenings, and that the owner of the land enter into a **subdivision agreement** with the municipality.

**Draft Approval may be Referred to Municipal Board: 50(14)–(16)**

If, on the other hand, the Minister intends to refuse to give draft approval, the applicant must be notified and given written reasons. The applicant has 60 days to ask that the application be referred to the Municipal Board. If no request is submitted within that time, the refusal takes effect.

An application may be referred to the Municipal Board at any time before the Minister decides for or against draft approval. If the applicant asks for a referral, with written reasons, the Minister must comply unless the request is not really genuine.

**Subdivision Agreement: 50(6)**

A subdivision agreement may be registered against the land and may be enforced against the owner or any subsequent owner. Section 166 of the **Municipal Act** refers to the financial contributions received by municipalities for the expenses incurred as a result of a subdivision.

**Parkland Conveyance: 50(7)–(12)**

As an alternative to taking 5% of the land area of a residential subdivision for park purposes, a municipality which has an official plan with specific policies relating to parkland may take land at a rate of up to one hectare for each 300 dwelling units. This allows a municipality to obtain more parkland when land is being developed at a high density.

Instead of taking land, either under the 5% or the density formula, a municipality may demand a cash payment of equal value. The value is determined as on the day before draft approval of the plan. The purpose of this cash-in-lieu of parkland provision is to allow the municipality to acquire recreational land of adequate size where it is needed, using the funds obtained from individual subdivisions.

All land conveyed to the municipality for park purposes must be used for park purposes or some other public recreational purpose, such as the site for an arena. However, it may be sold at any time. All cash received by the municipality instead of parkland must be kept in a special parks account, to which the municipality may add additional funds. The funds in this account may only be used for parkland acquisition or for the acquisition of land for other public recreational purposes. (See also section 41: Parkland Dedication, page 23).

**Conditions may be Referred to Municipal Board: 50(17)**

If not satisfied with the conditions imposed by the Minister, the applicant or the municipal council may have those conditions referred to the Municipal Board, by sending written

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* For a commercial or industrial subdivision, the maximum park conveyance is 2% rather than 5%.

notice to the secretary of the Board and to the Minister. The Board will then decide the issue.

**Withdrawal of Approval, Change of Conditions: 50(18)**

The Minister has the discretion to withdraw draft approval or change the conditions of approval at any time prior to final approval of the plan for registration.

**Final Approval: 50(19), (20), (21)**

When the draft plan is approved, the subdivider may proceed to lay out the roads and lots on the ground and to prepare an accurate final plan certified by an Ontario Land Surveyor. If satisfied that the plan conforms to the approved draft plan and that the conditions are or will be fulfilled, the Minister may approve the plan and it may then be registered.

Approval may be withdrawn and a new application may be required if the plan is not registered within 30 days of final approval.

**Duplicates: 50(22)**

Duplicates of the plan, of a type approved by the Minister, are required to be submitted to the registrar or master of titles when tendering the plan for registration. These are endorsed by the registrar or master, showing the plan number and the date of registration and are delivered to the Minister.

## SECTION 51. PROHIBITED LAND SALES

It is an offence to offer for sale, agree to sell or sell lots from an unregistered plan; however, offers and agreements to purchase may be made on the basis of a draft approved plan. It is **not** an offence to sell lots from a reference plan in accordance with the regulations under the **Registry Act** or the **Land Titles Act.** A reference plan under these Acts merely provides a graphic representation of lots initially described by "metes and bounds".

## SECTION 52. CONSENTS TO LAND DIVISION

**Consent Granting Authority: 52(1)**

A consent to a land severance is an authorization to separate a parcel of land from another adjoining parcel in order to sell it or mortgage it or in order to lease it for more than 21 years.

In southern Ontario, the councils of regions, counties, cities outside regions and separated towns are responsible for consents. The council may carry out the function itself or delegate it to a committee of council, appointed officer or where appropriate to a land division committee or committee of adjustment. The council of a region or county may also delegate, with the Minister's approval, to a local municipality which in turn could delegate to a committee of council, appointed officer or committee of adjustment.

In northern Ontario, the responsibility rests with the councils of the Regional Municipality and the cities. These councils may delegate to a committee of council, appointed official or committee of adjustment if they wish.

In all other areas of the north, the Minister is responsible for consents. However, the Minister may further delegate to a municipal council, district land division committee or planning board if he wishes.

**Under what Circumstances Should a Consent be Granted?: 52(1), (2), (4)**

A consent may be granted if the council* or the Minister is satisfied that a plan of subdivision is not necessary for the proper and orderly development of the municipality. In reviewing an application, regard must be had to the same matters as for a plan of subdivision as set out in subsection 50(4). Council must confer with such agencies or persons as are prescribed by regulation.

**Cash-in-lieu of Parkland Conveyance: 52(3)**

Where land is required to be conveyed to a municipality for park or other public recreational purposes, the amount of the parkland payment is determined as of the day before the day of the giving of the consent. Subsection 52(19) then clarifies that consent is given after all conditions have been met.

**Notice of a Decision by a Council: 52(5), (6)**

Notice of a favourable decision by a council, including the conditions, if any, must be sent within 10 days from the making of the decision to the applicant and to any of the people or agencies conferred with who made a written request to be notified. The notice must also be sent to the Minister if he has requested to be notified of **all** decisions to grant consents in that municipality.

Notice of a refusal must be sent to the applicant and to other agencies and persons conferred with and who requested notification within 10 days from the making of the decision.

**Appeal from a Council Decision on a Consent: 52(7)**

The applicant, the Minister or any agency or person to whom a notice of the decision was sent may appeal a council decision on a consent application within 30 days of the making of the decision. An appeal must be submitted to the clerk of the council which made the decision and it must be accompanied by the prescribed fee and supported by written reasons. (The current Board fee is $100.)

**Appeal of Consent Conditions: 52(8)**

Where a consent is granted with conditions, the applicant, Minister, agency or any person receiving notice of the decision may, within 30 days of the decision, appeal any condition(s). The appeal must be filed with the municipal clerk giving written reasons and identifying the condition(s) that is/are in dispute.

**Clerk Forwards Appeal Information: 52(9)**

Upon receipt of an appeal, the clerk is required to forward it by registered mail, together with all relevant documents, to the Municipal Board.

**Notice of Minister's Intended Decision on a Consent: 52(10), (11)**

If the Minister is the consent-granting authority, he must confer with such persons or agencies as he considers have an interest in the application. If conditions are to be imposed or if the application is to be turned down, prior notice must be given to the applicant.

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* or committee or appointed officer, if the authority has been delegated.

**Reference to Municipal Board: 52(12), (13), (14)**

Upon receiving notice of the Minister's intention to turn down an application, the applicant has 60 days to ask that it be referred to the Municipal Board. If no such request is made, the consent is deemed to be refused. If the Minister gives notice that he intends to grant a consent subject to conditions, those conditions may be referred to the Municipal Board. The Minister may change the conditions at any time prior to the giving of a consent.

In order to refer conditions to the Municipal Board, the applicant, or the local, county or regional municipality must notify the secretary of the Board and the Minister. Once the Minister has made his decision, there is no opportunity for appeal; only the conditions are subject to appeal.

An opportunity is also available to ask the Minister to refer a consent application to the Municipal Board **before** he sends out a notice of the intended decision. Unless he decides that the referral is not really genuine, the Minister will refer the application to the Board on request. An application can also be referred to the Board on the Minister's own initiative.

**Municipal Board Hearing: 52(15), (16)**

When a council decision or related condition(s) has been appealed or an application to the Minister has been referred, the Municipal Board will almost always hold a hearing. Notification to interested parties occurs in accordance with the Board's rules of procedure. If the Board considers the reasons given for an appeal to be insufficient, it may dismiss the appeal without a hearing, but it must give the appellant an opportunity to make representation as to the merits of the appeal.

**Municpal Board Decision: 52(17), (18)**

The Board may make any decision that the Minister or a council could have made. If the decision is that the consent should be given, the council or the Minister must implement that decision and give the consent. If conditions are to be imposed, the consent is not given until those conditions have been fulfilled.

**Giving of Consent and Fulfilling Conditions: 52(19), (20)**

Where there is no appeal or referral, the Minister or approval authority shall give the consent when the conditions are fulfilled. Additionally, a consent is deemed to be refused where conditions have not been fulfilled within one year of being imposed.

**Certificate of Consent: 52(21)**

A distinction is made between a decision to give a consent and the actual giving of the consent. A favourable decision without conditions may be followed immediately by the giving of the consent. When conditions are imposed, these must be fulfilled before the actual consent is given. The clerk must give the applicant a certificate, which serves as conclusive evidence that the consent is valid.

**Consent Lapses in Two Years: 52(22)**

If the transaction for which a consent has been given is not carried out within two years of the date of the certificate, the consent lapses and a new application must be made if the owner wishes to pursue it. The council or the Minister may also provide for an earlier lapsing of a consent, simply by a statement to that effect in the conditions of decision.

## SECTION 53. DELEGATION OF CONSENT AUTHORITY

There are certain conditions that can be applied to the delegation of consent authority as described under subsection 52(1) on page 33.

Any delegation may be made subject to conditions and may be withdrawn. Approval for the delegation of consent-granting authority to a lower-tier council may be withdrawn by the Minister at any time.

Where a committee of adjustment has been appointed to give consents, it is bound by the same provisions which apply to a council when giving consents (section 52). However, the provisions of section 44, applicable to committees of adjustment when dealing with minor variances, do not apply.

## SECTION 54. DISTRICT LAND DIVISION COMMITTEE

In northern Ontario the Minister may appoint a district land division committee and delegate his consent-granting authority to it. The delegation may be subject to any conditions as may be provided by the Minister's order. The committee is subject to many of the provisions applicable to a committee of adjustment regarding the election of a chairman, the definition of a quorum, the keeping of records, etc. When dealing with land in unorganized territory, the committee may enter into an agreement in giving a consent and the agreement may be registered on title and enforced against the owner and subsequent owners.

All fees obtained by a district land division committee must go to the provincial government; committee members are paid by the government.

## SECTION 55. LAND DIVISION COMMITTEE

A land division committee, appointed to give consents under authority delegated as described in section 54, is subject to the same provisions as apply to a committee of adjustment regarding the term of office, the definition of a quorum, the keeping of records, etc.

## SECTION 56. VALIDATION

In order to permit exceptions where extenuating circumstances exist, the Minister may issue an order whereby conveyances of certain lands that took place before March 19, 1973 (as described in the legislation) may be legalized, although they may have contravened the subdivision control legislation. The Minister may only issue such an order at the request by by-law of the municipal council. The municipality may impose any conditions on the lands that it sees fit. This type of exception is popularly called "validation".

# PART VII: GENERAL

This final part of the Act draws together all the sections that apply to the planning system in general.

It includes new provisions such as penalties for planning contraventions, Ontario Hydro exemption, removal of petitions to Cabinet, transitional provisions, application fees and the making of regulations.

## SECTION 57. MUNICIPAL ACT APPLIES TO LAND ACQUISITION

The **Municipal Act** contains a number of provisions dealing with land acquisition. When land is acquired for a purpose mentioned in the **Planning Act**, such as to implement an official plan (section 25), the requirements of the **Municipal Act** governing the specific purpose still apply.

## SECTION 58. POWER TO CLEAR, GRADE, ETC. LAND

In order to undertake a project for which an approval may be required, a municipality may demolish existing buildings and clear the land acquired for that project. Without this provision in the Act, there could be doubt that any such preliminary work could be started while negotiations were in progress for funding or approval of the project.

## SECTION 59. EXCHANGE OF LANDS

In order to acquire land needed for a project, a municipality may offer land it owns in exchange, as partial or total payment.

## SECTION 60. FAIR HEARING

A council must ensure that a fair opportunity must be given to person to make representations before it passes a by-law, and in doing so the council acts legislatively rather than judicially.

## SECTION 61. ONTARIO HYDRO

Ontario Hydro must have regard to policy statements (issued under section 3), and must consult with and have regard for the established planning policies of the municipality, before starting a project directly affecting that municipality (section 6). Section 47 prohibits the issuance of hydro permits for uses in conflict with the mobile home provisions of the **Planning Act** or with a Minister's order.

Land and buildings owned by Ontario Hydro and used for executive, administrative and retail purposes, or leased from Ontario Hydro, are subject to the **Planning Act.** All other undertakings of Hydro, such as the generation and distribution of electricity, are also subject to the **Planning Act** unless they are approved under the **Environmental Assessment Act.** Generally, the legislation is designed to ensure that Hydro's projects are considered under one of the two Acts, but not both.

## SECTION 62. EFFECT OF MUNICIPAL BOARD APPROVAL

When a matter is referred to the Municipal Board in accordance with the Act, the approval of the Municipal Board has the same force as the approval or consent of the Minister or of a municipal council. Once the approval or consent is given, the application is deemed to comply with the requirements of the Act and the decision cannot be challenged on the basis of some technical deficiency or irregularity in the procedures.

## SECTION 63. NO PETITION TO CABINET

While section 94 of the **Ontario Municipal Board Act** provides for a petition to Cabinet from Municipal Board decisions, that section does not apply to decisions on matters referred or appealed to the Board under the **Planning Act.** Therefore Municipal Board decisions on planning matters are final, unless the Minister states that such a matter is a matter of provincial interest.

## SECTION 64. RESUMPTION BY MINISTER OF MATTERS REFERRED TO O.M.B.

The Act provides in several instances for the Minister to refer a matter to the Municipal Board for a decision. For example, instead of approving an official plan the Minister may refer the plan to the Board. If the referral occurred on the Minister's initiative, the matter may be taken back at any time prior to a decision. If the referral resulted from a request by one or more persons, it may only be taken back with the concurrence of all the persons who asked for the referral.

## SECTION 65. EFFECT OF DELEGATE'S APPROVAL

The Act provides for certain delegation of authority from the Minister to a council or planning board or from a council to a committee of council, an appointed officer or a land division committee. An approval or consent by the delegated body has the same force and effect as the approval of the Minister or the council.

## SECTION 66. PENALTY

Fines may be levied on persons or corporations who contravene certain sections of the Act or who contravene certain by-laws. These include the provisions dealing with land sales from unregistered plans (section 51) and mobile homes (section 45) and any zoning by-law (section 34), holding by-law (section 35), bonus by-law (section 36), interim control by-law (section 37), temporary use by-law (section 38), site plan control by-law (section 40) or any Minister's order (section 46). The fines are greater for corporations than for individuals, and now may be imposed on a daily basis for the duration of the offence.

## SECTION 67. ASSESSMENT ACT DISCLOSURE

The assessment rolls are open to the public but the background data used to prepare the assessment rolls are confidential. An employee of a municipality may be permitted to receive the confidential information if it is for planning purposes. However, the employee is liable to a fine or imprisonment if the information is disclosed to someone not properly entitled to receive it.

## SECTION 68. TARIFF OF FEES

Municipalities may charge a fee for the processing of planning applications. Such a fee must be established by by-law and must be designed to cover no more than the cost incurred by the municipality in processing the application.

A council, a committee of adjustment or a land division committee is allowed to reduce a fee or waive it altogether if justified by particular circumstances.

An applicant who disagrees with the fee charged may pay under protest and appeal to the Municipal Board within 30 days of payment of the fee. The OMB in hearing the appeal may dismiss it, or order a refund as determined by the Board.

## SECTION 69. REGULATIONS

Regulations may be issued by the Cabinet, dealing with:

- the giving of notice and the holding of meetings to ensure public participation on official plan or zoning matters;
- the fees charged for consent applications where the power has been delegated to a planning board by the Minister;
- rules of procedure for committees of adjustment, land division committees, and for councils and delegates of council who are consent granting authorities;
- the agencies or persons to be consulted when dealing with a consent application;
- rules of procedure for minor variance applications dealt with by a committee of adjustment.

## SECTION 70. CONFLICT WITH OTHER ACTS

Matters governed by the **Planning Act** may also, in some particular cases, be affected by other legislation. Under those circumstances, the requirements of each Act must be complied with but if there is a conflict between requirements of the **Planning Act** and another Act, the **Planning Act** prevails.

## SECTION 71. TRANSITION PROVISIONS, OFFICIAL PLANS

An official plan approved under the previous **Planning Act** continues in effect. However, since the 1983 Act no longer provides for joint planning in the southern part of the province, existing joint official plans are automatically repealed two years after the new Act comes into force. Exceptions are official plans continued by Minister's order and those joint plans which are adopted by a county council or planning board (in northern Ontario). Within the two-year period the Minister may by order keep in force any joint plan or part of it. The Minister may also allocate a joint plan or part of a joint plan to a local municipality or county. Provision is also made for earlier repeal or for an amendment proposed by a municipality affected by a joint plan.

## SECTION 72. TRANSITION PROVISIONS, PLANNING BOARDS

All previously existing planning areas in southern Ontario, including joint planning areas and subsidiary planning areas, are dissolved. The 1983 Act only provides for joint planning areas in the north and planning areas consisting entirely of unorganized territory.

## SECTION 73. CHAPTER 379 R.S.O. 1980 REPEALED

The old **Planning Act** is repealed (subsection 73(1)) with the exception of section 40 (subsection 73(2)), being site plan control, which will remain in effect for a period of time in order to allow municipalities to prepare official plan policies for site plan control procedure.

## SECTION 74. MATTERS CONTINUED UNDER OLD ACT

Any planning matter or proceeding started to be processed before the new Act is effective, shall continue to be subject to the old Act if before August 1, 1983:

- a by-law has been passed to adopt an official plan, amendment or repeal of an official plan; designation of a redevelopment area; a zoning by-law or amendment;
- a zoning by-law or amendment has been passed by Council;
- an individual requests an official plan amendment, subdivision plan or zoning application;
- a site plan control application has been made or an application for a consent has been made.

## SECTION 75. COMMENCEMENT OF NEW ACT

The new Act comes into force upon proclamation by Cabinet. Proclamation occurred on August 1, 1983 with the exception of section 40 (see section 73 page 39).

## SECTION 76. SHORT TITLE

The Act is officially called the **Planning Act**, 1983.

*Cette publication est également disponible en français.*

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Claude Bennett, Minister